Supreme Court, U.S.
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No.

In the
Supreme Court of the United States

JONATHON WALLS,

Petitioner,

v.

PATRICK WRIGHT,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

JAMES E. RYAN
Attorney General of Illinois

JOEL D. BERTOCCHI
Solicitor General of Illinois

WILLIAM L. BROWERS
COLLEEN M. GRIFFIN
Counsel of Record
Assistant Attorneys General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-4684

Counsel for Petitioner

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QUESTIONS PRESENTED FOR REVIEW

1. Where comments made by a state judge in a capital sentencing are subject to alternative factual interpretations, may a federal court on collateral review disregard the interpretation the State's highest court gives those statements and instead require an express statement of understanding and compliance with *Eddings v. Oklahoma*, 455 U.S. 104 (1982)?

2. Whether the court of appeals' holding that *Eddings* requires an express statement of compliance creates a new rule of law on collateral review in violation of *Teague v. Lane*, 489 U.S. 288 (1989) and *Saffle v. Parks*, 494 U.S. 484 (1990)?

Other Cases:

People v. Wright,
111 Ill.2d 128, 490 N.E.2d 640 (1985) 11, 15

Wright v. Walls,
288 F.3d 937 (7th Cir. 2002) 12, 13, 15, 16

Wright v. Walls,
292 F.3d 933 (7th Cir. 2002) 13

Additional Authority:

28 U.S.C. §2254 ..... 14, 15, 17

PETITION FOR WRIT OF CERTIORARI

Petitioner, Jonathon Walls, respectfully asks this Court to issue a writ of certiorari to the United States Court of Appeals for the Seventh Circuit to review that court's judgment and panel opinion and its denial of Petitioner's petition for rehearing and suggestion of rehearing *en banc*.

OPINIONS BELOW

On June 11, 2001, the United States District Court for the Central District of Illinois issued an opinion granting a writ of *habeas corpus* to Respondent, Patrick Wright, with respect to the sentence of death imposed upon him in Coles County, Illinois. *Wright v. Cowan*, 149 F.Supp.2d 523 (C.D. Ill. 2001), reprinted in the Appendix to this Petition at App. 32-61. On April 24, 2002, a divided panel of the United States Court of Appeals for the Seventh Circuit affirmed the decision of the district court. *Wright v. Walls*, 288 F.3d 937 (7th Cir. 2002), reprinted in the Appendix to this Petition at App. 1-31. On June 6, 2002, the Court of Appeals denied Petitioner's petition for rehearing and suggestion of rehearing *en banc*, with one judge issuing a dissent from the denial of rehearing. That order and dissenting opinion, *Wright v. Walls*, 292 F.3d 933 (7th Cir. 2002), is also reprinted in the Appendix to this Petition at App. 62-65.

JURISDICTION

The United States Court of Appeals for the Seventh Circuit entered its judgment on April 24, 2002, and rehearing was denied on June 6, 2002. This Court has jurisdiction under 28 U.S.C. §1254(1) because this Petition seeks review of a decision of a United States Court of Appeals.

STATEMENT OF THE CASE

Respondent, Patrick Wright, was convicted by a Coles County, Illinois jury of murder, attempted murder, attempted rape, armed robbery, home invasion, and residential burglary. The charges arose from his attack on Carol Specht and her daughter, Connie, in their home in June of 1983. Connie survived the attack, but her mother did not. Respondent entered the Specht apartment intending to commit burglary. He was, however, aware that Carol Specht was inside. Once inside he threatened Carol with a knife, attempted to rape her, and then tied and gagged her. Respondent discovered Connie in another room and brought her to her mother's room, where he sexually abused her. Respondent slashed Connie's throat and fatally stabbed Carol in the back before fleeing. After being arrested, Respondent gave an audiotaped statement to police in which he admitted committing the crimes.

After being convicted, Respondent waived his right to have the jury determine whether he should be sentenced to death. The trial judge held a sentencing hearing, at which he heard psychiatric testimony to the effect that Respondent suffered from a fetish for women's shoes (about which Respondent had also testified at trial) and that this fetish controlled Respondent's life and had resulted in his prior incarceration and institutionalization. At the conclusion of this hearing, the trial judge sentenced Respondent to death. In doing so the judge commented that he did not think anyone could feel "anything but sympathy for this pathetic creature, Patrick Wright. . . ." The judge added that his feelings of sympathy for Respondent were not "an appropriate consideration" in determining his sentence, and added that a statement made by Respondent to the media after the verdict that he wanted to be sentenced to death would also not be considered. The judge then observed that:

> To repeat, in part, any matters dealing with sympathy, outrage, who the victim was, all the matters that I just mentioned have no bearing on whether the defendant shall receive the death penalty. And again, I note for the record that I have cited them so the record is clear that I have rejected them, and I have disregarded them in making my decision.

In addition, the judge noted that he had been unable "to determine the existence of any mitigating factors within or without the statute" other than Respondent's mental disturbance at the time of the crime.

On October 18, 1985, the Illinois Supreme Court affirmed Respondent's convictions and death sentence on direct appeal. *People v. Wright*, 111 Ill.2d 128, 490 N.E.2d 640 (1985), *cert. denied*, *Wright v. Illinois*, 479 U.S. 1101 (1987). In its opinion the Illinois Supreme Court considered and rejected the claim that the trial judge had improperly believed himself to be barred by law from considering Respondent's traumatic history, holding that the judge had considered all potential aggravating and mitigating factors, including Respondent's "troubled youth and its contribution, if any, to the mental disturbance existing at the time that the crime was committed." 111 Ill.2d. at 166-68, 490 N.E.2d. at 656. Petitioner's two state-court post-conviction petitions, and the appeals thereon, were similarly unsuccessful. *People v. Wright*, 149 Ill.2d 36, 594 N.E.2d 276 (1992), *cert. denied*, *Wright v. Illinois*, 506 U.S. 1004 (1992); *People v. Wright*, 189 Ill.2d 1, 723 N.E.2d 230 (1999), *cert. denied*, *Wright v. Illinois*, 531 U.S. 836 (2000).

On May 26, 1993, Respondent filed a petition for writ of *habeas corpus* in the United States District Court for the Central District of Illinois, pursuant to 28 U.S.C. §2254. In his petition Respondent asserted, amongst other claims of error, that his rights under both the Fourteenth and Eighth Amendments to the United States Constitution were vio-

lated because the trial judge had believed he was precluded, as a matter of law, from considering Respondent's traumatic childhood and lifelong history of mental health problems as mitigating evidence in imposing sentence, contrary to *Eddings v. Oklahoma*, 455 U.S. 104 (1982). Respondent's *habeas* proceeding was initially stayed pending the resolution of his second state-court post-conviction petition. On July 11, 2001, the district court granted the writ as to Respondent's death sentence. *Wright v. Cowan*, 149 F.Supp. 2d 523 (C.D.Ill. 2001); App. 32-61. The district court accepted Respondent's claim that the trial judge had erroneously believed he was precluded as a matter of law from considering Respondent's traumatic childhood and lifelong history of mental problems as mitigating evidence in sentencing. In doing so the district court gave no deference to the Illinois Supreme Court's contrary interpretation of the trial judge's statements; instead, it relied on the views of a dissenting justice. 149 F.Supp.2d at 537; App. 51-52.

Petitioner filed his notice of appeal on August 2, 2001. On April 24, 2002, a divided panel of the Court of Appeals affirmed the decision of the district court vacating Respondent's death sentence. *Wright v. Walls*, 288 F.3d 937 (7th Cir. 2002); App. 1-31. The majority agreed with the district court that the trial judge had affirmatively refused to consider mitigation evidence, contrary to *Eddings v. Oklahoma*, 455 U.S. 104 (1982). The majority concluded that the judge's statement that sympathy had no bearing on his decision whether to impose the death penalty necessarily meant that he believed he *could not* consider the evidence of Respondent's traumatic childhood, which had given rise to his feeling of sympathy. *Id.* at 942-943; App. 8-11. The majority inferred that the trial judge had "linked" the evidence of Respondent's traumatic childhood with the evidence that the judge had specifically stated had no bearing on his decision, which included sympathy, simply because the judge had said he felt sympathy for Respondent because

of his history. *Id.* at 944; App. 12. The majority declined to defer to the Illinois Supreme Court's finding that the trial judge had considered all of the evidence before him, indicating that it did not believe such deference was due that finding because it had legal implications. *Id.* at 945; App. 14. The majority also held that the Illinois Supreme Court's finding was without factual support. *Id.*[1]

Judge Easterbrook dissented from the panel majority's ruling on Respondent's death sentence. *Id.* at 947-54 (Easterbrook, J., dissenting in part); App. 18-31. He observed that, unlike the sentencing judge in *Eddings*, the trial judge in this case had never said he was precluded by law from considering evidence of Respondent's traumatic childhood. *Id.* at 948; App. 19. Concluding that the judge's statements were, at most, ambiguous regarding whether he believed he was permitted to consider that evidence (as opposed to believing that he could do so but was not required to), *id.* at 952; App. 26, Judge Easterbrook argued that the issue of the judge's understanding presented a factual question on which a federal court in a *habeas corpus* proceeding was required to defer to the resolution of the issue reached by the Illinois Supreme Court. *Id.* at 952-53; App. 27.

On June 6, 2002, the Court of Appeals denied Petitioner's petition for rehearing with suggestion of rehearing *en banc*. *Wright v. Walls*, 292 F.3d 933 (7th Cir. 2002). Judge Easterbrook dissented from the denial of rehearing. He

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[1] Respondent cross-appealed the district court's rejection of his claim that his trial counsel had been constitutionally ineffective in failing to argue, investigate, or introduce available evidence at trial about Respondent's mental health in support of a possible verdict of guilty but mentally ill. The Seventh Circuit panel unanimously rejected this claim. *Wright*, 288 F.2d at 946-47; *id.* at 948 (Easterbrook, J., concurring in part and dissenting in part).

urged rehearing to consider application to this case of this Court's decision in *Saffle v. Parks*, 494 U.S. 484 (1990), which, although it had been cited by Petitioner, was never addressed by Respondent or discussed by either the panel majority or the initial dissent. *Wright*, 292 F.3d at 933 (Easterbrook, J., dissenting from denial of rehearing). In *Parks*, the Court held that an instruction to a jury in a capital sentencing that it should not consider sympathy for the defendant was compatible with its earlier holding in *Eddings*. *Parks*, 494 U.S. at 489-93. Judge Easterbrook found the remarks of the trial judge in the instant case to the effect that he would not take into account his sympathy for Respondent to be closer to the instruction upheld in *Parks* than to the legal prohibition struck down in *Eddings*. *Wright*, 292 F.3d at 933-34; App. 63-64. He further observed that in this case, as in *Parks*, the trial judge had admitted all evidence offered in mitigation and that, in both cases, the sentencer had been legally permitted to consider all of the evidence but would not consider sympathy. *Id.* The Court in *Parks* had restated the "precise holding" of *Eddings*: "that the State cannot bar relevant mitigating evidence from being presented and considered during the penalty phase of a capital trial," *Parks*, 494 U.S. at 490, and Judge Easterbrook argued that this holding had not been transgressed in this case because the judge had not cited any legal inability to consider any mitigating evidence. *Wright*, 292 F.3d at 934; App. 64. He further noted that, in *Parks*, the Court, relying on *Teague v. Lane*, 489 U.S. 288 (1989), had found that modification or extension of the rule of *Eddings* would be improper on collateral review, and argued that the panel majority in the instant case had made such a modification when it had held that a capital sentence could not be upheld if the sentencing judge did not "demonstrate beyond peradventure that all admissible mitigating evidence has been considered." *Wright*, 292 F.3d at 934; App. 64-65.

On June 11, 2002, the Court of Appeals granted Petitioner's motion to stay issuance of the mandate pending the filing of this Petition for Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

The panel majority opinion of the Court of Appeals took what could at most be described as an ambiguous statement by a sentencing judge and found therefrom a violation of *Eddings v. Oklahoma*, 455 U.S. 104 (1982). While doing so, that court in effect announced a rule requiring that when a judge in a capital sentencing comments on what evidence he is considering as mitigating, he must then also state that he understands *Eddings*, and knows what he can and cannot consider as a matter of law. The court failed to give the appropriate deference to state court historical factual findings in disregarding the Illinois Supreme Court's contrary interpretation of the judge's statements, in contravention of settled law regarding the limited role of federal courts on *habeas corpus* review. Additionally, the court announced a new rule of compliance with *Eddings*, which rule should not be enforceable on collateral review.

I. CERTIORARI SHOULD BE GRANTED BECAUSE THE PANEL MAJORITY OF THE COURT OF APPEALS DISREGARDED THE INTERPRETATION THE STATE'S HIGHEST COURT GAVE A SENTENCING JUDGE'S COMMENTS MADE IN A CAPITAL SENTENCING AND INSTEAD REQUIRED AN EXPRESS STATEMENT OF UNDERSTANDING AND COMPLIANCE WITH *EDDINGS v. OKLAHOMA*, 455 U.S. 104 (1982).

This case presents an important issue regarding the manner in which judges conducting capital sentencing proceedings should proceed under *Eddings v. Oklahoma*, 455 U.S. 104 (1982). While there is no dispute that judges must, under *Eddings*, be permitted to consider any poten-

tially mitigating evidence, the panel majority's holding in this case took that rule a step further, essentially requiring that judges, if they make any statement regarding mitigation, expressly state that they understand that they may consider each separate category of such evidence. In doing so, moreover, the majority rejected the factual determination of the highest court of the State in which the trial judge sat that the judge had, in fact, understood that he could consider the evidence proffered by Respondent, in compliance with both *Eddings* and state law. The Court should grant certiorari in this case to provide guidance to reviewing courts, and especially to federal courts acting on *habeas corpus* petitions, regarding what steps are necessary to comply with the mandate of *Eddings* and whose job it is to determine whether a trial judge has, as a factual matter, taken those steps.

In the sentencing phase of a capital case, "[what] is essential is that the [sentencing body] have before it all possible relevant information about the individual defendant whose fate it must determine." *Jurek v. Texas*, 428 U.S. 262, 276 (1976) (opinion of Stewart, Powell & Stevens, JJ.) For that reason, the Court has insisted that "the sentencer in capital cases must be permitted to consider any relevant mitigating factor." *Eddings*, 455 U.S. at 114 ("neither may the sentencer refuse to consider as a matter of law, any relevant mitigating evidence"); *Lockett v. Ohio*, 438 U.S. 586, 604 (1978).

Eddings does not compel consideration of any evidence, however; it only bars the wholesale exclusion of any relevant mitigating evidence. *Eddings*, 455 U.S. at 114. In *Eddings*, the trial judge found that the defendant's youth was a mitigating factor of great weight: "I have given very serious consideration to the youth of the Defendant when this particular crime was committed. Should I fail to do this, I think I would not be carrying out my duty." *Id.*, 455

U.S. at 108-109. But he refused to consider in mitigation the circumstances of Eddings' unhappy upbringing and emotional disturbance: "[The] Court cannot be persuaded entirely by the . . . fact that the youth was sixteen years old when this heinous crime was committed. Nor can the Court *in following the law*, in my opinion, consider the fact of this young man's violent background." *Id.*, 455 U.S. at 109 (emphasis supplied). Finding that the only mitigating circumstance was Eddings' youth, and finding further that this circumstance did not outweigh the aggravating circumstances present, the judge sentenced Eddings to death. This Court, in finding that the exclusion of the evidence of Eddings' background was unconstitutional, observed that "from [the trial judge's] statement it is clear that the trial judge did not evaluate the evidence in mitigation and find it wanting as a matter of fact; rather, he found that *as a matter of law* he was unable to even consider the evidence." *Eddings*, 455 U.S. at 113 (emphasis in original). Neither *Eddings* nor *Lockett* established what, if any, weight had to be given to such evidence.

The Court reinforced the notion that *Eddings* permits, but does not require, sentencing bodies to consider mitigating evidence in *Saffle v. Parks*, 494 U.S. 484 (1990). In that case, the trial judge instructed the capital sentencing jury that it "must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factor." *Parks*, 494 U.S. at 487 (internal quotations omitted). A reasonable jury could have understood the reference to "sympathy" to include that generated by Parks' broken home and unhappy childhood. Parks argued that this instruction violated the rule of *Eddings* but the Court upheld the instruction, in part because the trial judge had allowed the defendant to introduce all the evidence the defendant had believed to be mitigating. The Court observed that, unlike the concern expressed by defendant Parks, the rule in *Eddings* concerns

what a sentencer must be permitted to consider, and not how it must consider it. *Parks*, 494 U.S. at 490.[2]

The sentencing judge in this case, after admitting all the evidence in aggravation and mitigation, including the facts regarding Respondent's traumatic upbringing, stated, "I don't think any reasonable person who has heard all of the evidence in this case can feel anything but sympathy for the pathetic creature, Patrick Wright." He then stated, in accordance with the principle later announced in *Parks*, that consideration of sympathy for Respondent would be "inappropriate." But, after summarizing all the evidence, the judge added:

> [A]ny matters dealing with sympathy, outrage, who the victim was, all the matters I just mentioned have no bearing on whether the defendant shall receive the death penalty. And again, I note for the record that I have cited them so the record is clear that I have rejected them, and I have disregarded them in making my decision.

Later, the judge stated that he could find only one factor in mitigation, *i.e.*, that the murder was committed while the Respondent was under the influence of extreme mental or emotional disturbance, although not such as to constitute a defense to prosecution. The judge found this mitigating factor insufficient to preclude the imposition of the death penalty.

The Illinois Supreme Court on direct appeal addressed the Respondent's argument that the trial court had violated

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[2] The *Parks* Court also considered whether *Eddings* might be extended to condemn an anti-sympathy instruction and held that no such modification would be proper on collateral review. *Parks*, 494 U.S. at 493-95, *citing Teague v. Lane*, 489 U.S. 288 (1989); *see infra* p. 16-19.

the rule of *Eddings* by failing to consider evidence of his traumatic youth in mitigation. The court reviewed the substantial evidence that had been introduced regarding Respondent's youth. This included evidence that: prior to being adopted at age four, Respondent was subjected to excessive physical punishment and abuse by his natural mother; he had suffered from a psychosexual disorder involving shoe fetishism since age seven; he was spurned and physically abused by his adoptive mother because of his psychosexual disorder; and he had been institutionalized in mental hospitals beginning at age 15. *People v. Wright*, 111 Ill.2d 128, 490 N.E.2d 640, 656 (1985).

The Illinois Supreme Court concluded that the record demonstrated not only that the sentencing judge had known that he was permitted to consider evidence of Respondent's traumatic youth, but also that he had in fact done so as part of his determination that there were no mitigating factors sufficient to preclude imposition of the death penalty. The court noted that the prosecution had specifically asked that the sentencing judge consider all of the evidence presented during trial, which had included Respondent's own testimony about his mental disorder, and that the judge said he would do so. The court also stated that the trial judge's comment that he could find only one mitigating factor—the fact that the murder was committed "while the defendant was under the influence of extreme mental *** disturbance, although not such as to constitute a defense to prosecution"—established that the judge did consider the Respondent's troubled youth and its contribution, if any, to the mental disturbance existing at the time the crime was committed. *Id.*

Contrary to the interpretation of Illinois' highest court, however, the panel majority of the Court of Appeals drew its own differing inferences from the statements of the sentencing judge, finding instead that his remarks showed

the "wholesale exclusion of evidence offered by Wright in mitigation." *Wright v. Walls*, 288 F.3d 937, 946 (7th Cir. 2002); App. 17. The majority found that the sentencing judge's statement that "sympathy, outrage, who the victim was, all the matters I just mentioned have no bearing on whether the defendant shall receive the death penalty," necessarily meant that the judge had believed he could not consider those matters, and not that he had chosen not to. The majority did not stop there, however, but "linked" the sentencing judge's previous statement that he felt sympathy because of Respondent's traumatic upbringing to the aforementioned statement, and determined that the sentencer's statements amounted to the sort of unequivocal statement of law made in *Eddings*, wherein the judge expressly stated his belief that he was precluded from considering certain evidence "in following the law." The majority believed that the sentencing judge's language that he had "disregarded" the evidence and that the evidence "had no bearing" on his decision was not limited to the emotional response, or the sympathy, generated by Respondent's background, and, "was so imbued with exclusionary language as to violate the constitutional language requirements announced in *Eddings*." *Wright*, 288 F.3d at 944; App. 12. The majority supposed that if the sentencing judge had not precluded consideration of Respondent's troubled childhood, he would have mentioned it as mitigating, and, in failing to do so, violated the Constitution.

Contrary to the panel majority's view, however, the statements made in the instant case are not at all "strikingly similar" (288 F.3d at 943; App. 10) to the clear statement of law made by the judge in *Eddings*. Although the trial judge herein said that his sympathy for Respondent was "not an appropriate" consideration, a statement that accords with the jury instruction upheld in *Parks*, he did not at any point say that he could not consider the evidence introduced in the record regarding Respondent's childhood; at most, the

judge said he "ha[d] disregarded" the factors that led to that sympathy. Finally, the judge noted the existence of Respondent's mental and emotional disturbance at the time of the crimes at issue. Nothing in these statements resembles the statement by the trial judge in *Eddings* that he could not "in following the law" consider certain evidence in mitigation. They are, as Judge Easterbrook concluded in dissent, at most ambiguous statements subject to differing interpretations. *Wright v. Walls*, 288 F.3d at 952; App. 26. (Easterbrook, J., dissenting in part).[3]

The panel majority's ruling in the instant case suggests that, in order to satisfy federal courts, state sentencing judges cannot "get to the bottom line," *Wright v. Walls*, 292 F.3d 933, 951 (7th Cir. 2002); App. 25 (Easterbrook, J., dissenting in part), but must instead, if they make any statement regarding mitigation, follow a script in which they expressly list not only what they do consider mitigating, but also what they may consider mitigating. It is unlikely, in the broad range of capital sentencing proceedings that occur in the various states, that judges will

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[3] Indeed, the panel majority's parenthetical conclusion, *Wright v. Walls*, 288 F.3d at 943, that the trial judge expressly "exclu[ded]" consideration of Respondent's "wretched" and "pathetic" life, is simply not supported by the record at all. Initially, the judge listed *sympathy* among the factors he would not consider, but did not say he would not consider the historical facts about Respondent's childhood that had triggered that sympathy. The Court has distinguished between feelings of sympathy for a defendant and "any sympathetic aspect of the defendant's character or record" that may have motivated those feelings. *California v. Brown*, 479 U.S. 538, 542 (1987). Second, the judge said only that consideration of sympathy was "inappropriate" and that he had in fact "disregarded" it, and not that he was barred from considering either sympathy or its cause.

always follow that script.[4] Instead, issues of meaning or understanding of the law that arise in connection with the statements of a sentencing judge are factual matters upon which state appellate courts are owed deference under 28 U.S.C. §2254. *See Parker v. Dugger*, 498 U.S. 308, 320 (1991) ("In this case, we conclude that a determination of what the trial judge found is an issue of historical fact. It depends on an examination of the transcript of the trial and sentencing hearing, and the sentencing order. This is not a legal issue; no determination of the legality of Parker's sentence under Florida law necessarily follows from a resolution of the question of what the trial judge found."). The panel majority's holding in the instant case alters the balance between state and federal courts by permitting federal courts conducting limited collateral review to disregard the resolution by a State's highest court of a factual ambiguity in the statements of a judge of that State regarding the application of that State's law, over which (both the judge and the law) that high court exercises plenary review. This holding contradicts cases in which the Court has required federal courts in *habeas corpus* proceedings to defer to state appellate courts in resolving factual issues, including *Wainwright v. Goode*, 464 U.S. 78, 85 (1983) (record of remarks of sentencing judge was "[a]t best . . . ambiguous" regarding whether the judge had relied on an impermissible factor; because both conclusions were supported by the record, federal court impermissibly substituted its own judgment for that of State's highest court.).

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[4] Although the Court has recently held that capital defendants are entitled to have juries pass upon the existence of factors making them eligible for the death penalty, *Ring v. Arizona*, ___ U.S. ___, 122 S.Ct. 2428 (2002), defendants can and will waive that right, and have done so in past cases (as Respondent did in the instant case). There will thus continue to be a need for a rule governing the responsibilities of sentencing judges in capital cases and of federal courts collaterally reviewing their conduct.

Indeed, it appears that the panel majority opinion suggests a new level of review for purported *Eddings* violations on collateral review by demanding "constitutionally grounded *certainty*," *Wright v. Walls*, 288 F.3d at 953; App. 29 (Easterbrook, J., dissenting in part) (emphasis in original) that a trial judge has complied with *Eddings*, and demanding that this certainty be based on a new legal rule compelling a judge to give mitigation weight to mitigation evidence presented, or at least state that he has considered it in mitigation. The panel majority's insistence on certainty contradicts this Court's holding in *Parker* and in *Goode*.

If the panel majority has not suggested a new level of review, its decision still must be viewed as a dangerous precedent. The majority has unreasonably extended *Eddings*' holding that a state cannot forbid a capital sentencer from considering any ground advanced in mitigation, and found that any ambiguity will be resolved against the sentencing judge. In so doing, the panel majority has rejected this Court's clear holding that the meaning of an ambiguous pronouncement by a trial judge is a question of fact, not of law. *Parker*, 498 U.S. at 320; *Goode*, 464 U.S. at 83-85. The state court's findings, not the federal reviewing court's, should prevail. The panel majority here has held otherwise, and in so doing has disregarded the deference owed to state courts and the limited role of the federal court on habeas review. 28 U.S.C. §2254.

The meaning of the statements of the sentencing judge in the instant case was resolved by the Illinois Supreme Court in 1985. Even then, the ambiguity of those statements was amply demonstrated by the fact that two of that court's members dissented from the majority's interpretation of those statements. *People v. Wright*, 111 Ill.2d at 168 (Clark, C.J., dissenting); *id.* at 170 (Simon, J., dissenting). Now, after the passage of 17 years, the panel majority of the

Seventh Circuit has accepted the dissenting justices' interpretation of those statements (something the district court did explicitly, *see supra* p. 4). "That delay does more to show the wisdom of the rule treating these matters as factual (which allows the state's decision to stand) than to justify throwing the state-court decision out the window and treating the issue as *res nova*." *Wright v. Walls*, 288 F.3d at 954 App. 30 (Easterbrook, J., dissenting in part).

The Court should grant certiorari to address the proper resolution of ambiguities that will no doubt often arise in the statements of sentencing judges in capital cases, and particularly the standards to be applied in interpreting those statements in federal *habeas corpus* proceedings, including the proper deference due the interpretations placed on them by state courts. This case presents the Court with the opportunity to assure that statements by the sentencing judges are not presumed to contain constitutional violations, and to clarify that *Eddings* requires no more than that the state not preclude a sentencer from considering relevant mitigation evidence.

II. CERTIORARI SHOULD BE GRANTED BECAUSE THE COURT OF APPEALS' HOLDING THAT *EDDINGS* REQUIRES AN EXPRESS STATEMENT OF COMPLIANCE CREATES A NEW RULE OF LAW ON COLLATERAL REVIEW IN VIOLATION OF *TEAGUE v. LANE*, 489 U.S. 288 (1989) AND *SAFFLE v. PARKS*, 494 U.S. 484 (1990).

The court of appeals in this case determined that if an ambiguous statement is made by a capital sentencing judge regarding what he is considering in mitigation, that judge must then expressly explain that he understands what he can consider as a matter of law, or violate the mandate of *Eddings v. Oklahoma*, 455 U.S. 104 (1982), regardless of the interpretation given those statements by the State's highest court. The panel majority of the Court of Appeals

extended the Court's holding in *Eddings*. That case merely held that sentencing courts or juries needed to be able to consider all such evidence. Because this new rule was created on collateral review, it contravenes *Teague v. Lane*, 489 U.S. 288 (1989), and more specifically *Saffle v. Parks*, 494 U.S. 484, 493-95 (1990), which specifically addressed collateral extensions of the rule in *Eddings*. The Court should grant certiorari to clarify the important issue of the reach of *Eddings* and the limitations placed on extensions of its rule in *habeas corpus* cases.

The Court in *Parks* considered whether a holding that an anti-sympathy jury instruction in a capital case was unconstitutional would constitute a "new rule" that could not be announced on collateral review. The Court reviewed relevant precedent, including both *Eddings* and *Lockett v. Ohio*, 438 US. 586 (1982), and found that neither case directly addressed whether an anti-sympathy jury instruction was permissible. In doing so, the Court distinguished between rules regarding what evidence must be subject to consideration at sentencing and how the sentencing authority must consider it. *Parks*, 494 U.S. at 490. Based in part on this distinction, the Court concluded that a rule prohibiting instructions that juries not consider sympathy in capital sentencings would be a "new rule" that could therefore not be enforced in a proceeding under 28 U.S.C. §2254. *Id.* at 490, 492-93.

The instant case presents a similar issue to that decided in *Parks*. There is no dispute in this case that the sentencing judge was permitted to consider evidence of the circumstances of Respondent's upbringing in deciding whether to apply the death penalty. In *Parks*, moreover, the Court reiterated the "precise holding" of *Eddings* and *Lockett*, namely, that a State cannot bar relevant mitigating evidence from being considered in capital sentencing proceedings. 494 U.S. at 490. Despite this clear but narrow rule,

the panel majority of the Court of Appeals pointed to no action taken by the State, in the persons of the prosecutors or the trial judge, that expressly prohibited or prevented consideration of the mitigating evidence cited by the panel majority; indeed, such evidence as there is suggests that the judge did so in concluding that the mental disorder under which Respondent suffered, which was argued to be the product of that upbringing, was a mitigating factor, albeit not one of sufficient weight to move the trial judge to sentence Respondent other than to death.

Thus, as in *Parks*, this case does not fall within the "precise rule" of *Eddings* or *Lockett*, which required that the consideration of certain evidence be permitted but did not dictate how it was to be considered. Instead, the panel majority in this case announced a new rule of law that will "impose[ ] a new obligation" on States that was not "dictated by precedent existing at the time the defendant's conviction became final." *Teague*, 489 U.S. at 301. Under the panel majority's rule, a sentencing judge who makes a statement regarding mitigation is then required to express with certainty that he can consider particular items of evidence, even if he does not intend to do so (and even if the state law he is applying clearly requires him to be able to do so). This rule would further render a nullity any state appellate court's interpretation of any ambiguity in the sentencing judge's statements and permit federal courts to review those statements *de novo* on collateral review.

Because this new rule extended, rather than applied, *Eddings* and *Lockett*, it should not be enforced on collateral review. *Parks*, 494 U.S. at 489-91. Where, as here, the record supports no suggestion that the trial judge was not trying to comply with applicable law regarding what he might consider, including both Illinois law and this Court's dictates in *Eddings* and *Lockett*, enforcement of this new rule in a *habeas corpus* proceeding would present no legit-

imate incentive for the state court to do what it was clearly already doing at the time of the sentencing itself. The Court should grant certiorari to consider the relationship between the facts of this case and the rule of *Eddings* and to establish a rule requiring that certain pronouncements by sentencing judges, in the absence of any statements that they will not follow that case's dictate, should not be enforced on collateral review.

CONCLUSION

For the aforementioned reasons, Petitioner, Jonathon Walls, respectfully requests that the Court grant Certiorari, reverse the decision of the United States Court of Appeals for the Seventh Circuit, and reinstate Respondent's sentence of death.

Respectfully submitted,

JAMES E. RYAN
Attorney General of Illinois

JOEL D. BERTOCCHI
Solicitor General of Illinois

WILLIAM L. BROWERS
COLLEEN M. GRIFFIN
Counsel of Record
Assistant Attorneys General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-4684

Counsel for Petitioner